IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LDG.)NO. 553 OF 2006

1. Wockhardt Limited & Anr. ..Petitioners.

Vs.

State of Maharashtra & Ors. ..Respondents.

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Mr.N.H. Seervai, Sr. Counsel with Mrs. Shyam Mehta i/by Harish Joshi & Co. for the Petitioners.

Mr. A. Sayed, AGP for Respondent Nos.1 to 4.

Mr.S.D.Bhosale with Mr.Y.R.Mishra for Respondent No.5.

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**CORAM : F.I. REBELLO AND ANOOP V. MOHTA,JJ.**

**DATED : 08TH MARCH, 2006.**

**P.C.:**

1. Rule. Heard forthwith.

2. Petitioner No.1 is the holder of proprietary rights in the products / dietary supplements in respect of which, respondent No.3 had issued a show cause notice to the petitioner No.1 and respondent No.4 has issued a prohibitory order in respect of certain stocks of certain dietary supplements of petitioner No.1.

3. In view of the order to be passed, it is not

necessary for us to go into all the contentions as urged on behalf of the petitioners before this court or for that matter, the reply filed on behalf of the respondent No.4. The products which are the subject matter of this petition are covered under item No.9 of Appendix to the Rules framed under the provisions of the Maharashtra Prevention of Food Adulteration Rules, 1962. The learned counsel also draws our attention to the report of the expert committee headed by Dr. Mhasalkar, prepared at the instance of the Ministry of Government of India, who vide para 7.1.13 and 7.1.14 has made certain recommendations. Our attention is also invited to the orders passed by the three other High Courts in respect of the same products.

4. On the other hand on behalf of the contesting respondents, our attention is invited to the rules framed under the Drugs and Cosmetics Rules, 1945 and Item 10 of Schedule -K, which includes substances which are used both as articles of food as well as drugs. The petitioners have been manufacturing the products in their factory in the State of Gujarat for the last about seven years. They import the same in the State of Maharashtra for the purpose of sale and as they have their godowns here. It is on account of the act of the respondent No.4 in issuing the prohibitory orders, that

the petitioners had to approach this court.

5. In respect of the similar food products a petition had been filed by Amway India Enterprises and Ors. vs. State of Maharashtra; in writ petition No. 335/2006, a learned bench of this court disposed of the same by order dated February 27, 2006. The items which were seized therein were bottles of Nutrilite Iron Folic. Before the learned Division Bench, a statement was made on behalf of the contesting respondents that they would give opportunity of hearing to the petitioners in respect of all the show cause notices issued against the petitioners. On behalf of the respondents, it was submitted that in the instant case also they would give hearing to the petitioners. On behalf of the petitioners, their learned counsel points out that there is a difference in the petition which was disposed of earlier as there was no prohibitory order at the time the petition was disposed of. When the petition came up for hearing, on behalf of the respondents their learned counsel points out that in fact in that case, goods had been confiscated.

6. Be that as it may, in our opinion, considering the long period during which the products were in the market and are being marketed by the petitioners, the

ends of justice would be met if in the meantime, the respondents are directed not to issue any fresh prohibitory order in respect of the goods where prohibitory orders were issued, till the hearing and final disposal of the proceedings and for such further period as set out hereinafter.

7. The petitioner to reply to the show cause notices within two weeks from today.

8. Respondent No.3 after giving the petitioners an opportunity of oral hearing, if so asked for, to dispose of the same within two weeks thereafter. If the order is adverse to the petitioners, the same be not given effect for a period of four weeks from the communication of the same to the petitioners. During this period no fresh prohibitory orders to be issued in respect of the goods for which prohibitory order was issued.

9. Rule made absolute accordingly with no order as to costs.

08.03.2006 (F.I.Rebello,J)

(Anoop V.Mohta, J)

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